
Fwd: Legal Analysis Memoranda - Internal Auditor and General Counsel

1 message

Colon, Ruben (BRD-MBR) <rcolon@volusia.k12.fl.us>
To: Jamison Jessup <jamison@jamisonjessup.com>

Thu, Aug 13, 2026 at 12:19 PM

Sent from my iPhone

Begin forwarded message:

From: "Crimins, Heidi M." <hmcrimin@volusia.k12.fl.us>
Date: May 8, 2026 at 4:26:58 PM EDT
To: "Colon, Ruben (BRD-MBR)" <rcolon@volusia.k12.fl.us>, "Goodrich, Krista N." <kngoodri@volusia.k12.fl.us>, "Brosemer, Donna B." <dbroseme@volusia.k12.fl.us>, "Haynes, Jamie (BRD-MBR)" <jmhaynes@volusia.k12.fl.us>, "Thompson, Jessie (BRD-MBR)" <jjthomps@volusia.k12.fl.us>
Cc: "Dr. Balgobin, Carmen (Superintendent)" <cbalgobi@volusia.k12.fl.us>, "Evans, Gilbert L." <glevans@volusia.k12.fl.us>, "Corr, Patricia" <pcorr@volusia.k12.fl.us>, "Whittenberger, Deidra L." <dlwhite@volusia.k12.fl.us>, "Micallef, Mike" <MRMical@volusia.k12.fl.us>
Subject: Legal Analysis Memoranda - Internal Auditor and General Counsel

Good Afternoon Board Members,

Attached are two legal memoranda addressing concerns raised by a community member regarding (1) the status of the District's internal auditor and (2) the reporting structure for the Board Attorney/General Counsel.

The first memorandum examines whether Florida law requires the internal auditor to be a direct employee of the District or permits the use of a qualified third-party service. The analysis concludes that the District's current approach—engaging an external audit firm that reports directly to the Board—not only meets statutory requirements but also aligns with industry standards. For your reference, an Opinion Letter from the DOE supporting this conclusion is also attached.

The second memorandum evaluates the reporting structure for the Board Attorney/General Counsel. The initial concern was based on a misunderstanding of the current arrangement. The analysis clarifies that Florida law allows the Board Attorney and General Counsel to be the same individual and does not prescribe a specific reporting structure, provided the Board maintains authority over the District's legal positions. The Superintendent may oversee the day-to-day logistical duties of the General Counsel, as long as this remains consistent with the Board's policies and directives. This model is utilized in several Districts across the state.

Both memoranda contain thorough legal analysis and references. This summary serves as a brief overview, and Board Members are encouraged to review the full documents for a deeper understanding.

Please feel free to reach out with any questions, requests for clarification, or if you would like to discuss these topics further.

Respectfully,

Heidi M. Crimins

Staff Attorney

Office of General Counsel Volusia County Schools

& School Board Attorney

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4 attachments



image001.png
62K

 **Internal Auditor Analysis legal memorandum.pdf**
384K

 **DOE Internal Auditor Opinion Letter.pdf**
49K

 **GC legal memorandum.pdf**
385K

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Joe York



May 29, 2020

Dr. Gregory Adkins, Superintendent
Lee County School District
2855 Colonial Boulevard
Fort Myers, Florida 33966-1012

Dear Superintendent Adkins:

Re: Auditor General Report No. 2020-201, Internal Audit Function

We have reviewed the above-referenced finding to determine whether the district school board is authorized to outsource the internal audit services required in section 1001.42(12)(l), Florida Statutes.

After extensive research and consultation with your staff, the Florida Department of Education has concluded that the district may satisfy the statutory requirement to “employ an internal auditor” by hiring a private CPA firm to perform internal audit services. Thus, it is our determination that Lee County School Board is in compliance with this statutory requirement.

Sincerely,

Suzanne Pridgeon

SP/l1

cc: Dr. Ami Desamours, Chief Financial Officer
Matthew Mears, General Counsel
Mark Eggers, Assistant Deputy Commissioner

Suzanne Pridgeon
Deputy Commissioner, Finance and Operations

TO: Members of the School Board of Volusia County

FROM: Heidi Crimins, Staff Attorney

Cc: Dr. Carmen Balgobin, Superintendent and Dr. Gilbert Evans, Board Attorney

DATE: April 28, 2026

RE: Internal Auditor Requirement Under § 1001.42, Florida Statutes — Use of Third-Party Internal Auditing Services

I. ISSUE PRESENTED

Whether the phrase “shall employ an internal auditor” in § 1001.42, Florida Statutes, requires direct district employment, or may be satisfied through retention of a qualified third-party internal auditing service.

II. SHORT ANSWER

There is a reasonable basis to conclude that the District School Board may satisfy § 1001.42, Florida Statutes, by engaging a qualified third-party internal auditing service, rather than hiring an internal auditor as a district employee, provided the internal audit function reports directly to the Board (or its designee) and is structured to maintain independence and full access. See § 1001.42, Fla. Stat.; § 1001.41(4), Fla. Stat.

III. APPLICABLE LAW

Section 1001.42, Florida Statutes, sets forth the powers and duties of district school boards, including the requirement that the District School Board “shall employ” an internal auditor and that the internal auditor report directly to the Board or its designee. See § 1001.42, Fla. Stat. In addition, district school boards possess general authority to contract as the “contracting agent for the district school system.” See § 1001.41(4), Fla. Stat. The superintendent is vested with “general oversight” over the district school system. See § 1001.49(1), Fla. Stat.

IV. ANALYSIS

A. Statutory Construction of “Shall Employ”

Florida courts generally begin with the plain language of the statute and apply the ordinary meaning of undefined terms, read in context. Section 1001.42 does not define “employ,” and it does not expressly state that the internal auditor must be a district employee or part of the District’s personnel system.

Counsel has not identified a Florida appellate decision squarely interpreting § 1001.42’s “shall employ” language as applied to the use of third-party internal auditing services. Accordingly, the analysis below is grounded in the statute’s text and structure, related provisions concerning Board authority, and general principles of Florida statutory construction, and further considers, as applied, the operational context reflected in current audit findings within the District and comparator peer districts.

The statute does, however, expressly require that the internal auditor report directly to the District School Board or its designee. See § 1001.42, Fla. Stat. That reporting requirement supports an interpretation focused on independence and Board oversight. To read § 1001.42 as imposing an

additional requirement of direct district employment would require implying a limitation not stated in the text.

As additional support for this functional, independence-based reading, the superintendent is statutorily charged with general oversight of the district school system. See § 1001.49, Fla. Stat. Where the internal auditor is a district employee, the position may be perceived as situated within the District's administrative structure for routine personnel and operational matters, even if the audit work is intended to be independent. By contrast, engaging a third-party internal audit service that reports directly to the District School Board (or to the Audit Committee as the Board's designee) and has full and unrestricted access to district records and personnel may mitigate independence concerns and reinforces the statute's emphasis on direct Board reporting.

B. Legislative Purpose: Independence, Scope, and Coverage

The internal audit requirement exists to ensure that districts maintain an audit function with sufficient independence, scope, and coverage to provide the District School Board with objective oversight of financial controls, compliance, and risk.

Consistent with that purpose, public-sector governance practice commonly treats the internal audit requirement as mandating the existence and independence of the internal audit function, not prescribing a particular staffing model. Co-sourced and outsourced arrangements are commonly used by school districts and other public entities to address resourcing and coverage needs.

From a governance perspective, leveraging a qualified external firm can provide specialized expertise, enhanced objectivity, and scalable services that may be difficult to replicate through a single in-house position. Depending on pricing and staffing assumptions, the model may also be cost-effective and consistent with prudent fiscal stewardship.

C. Administrative and Oversight Context

Beginning in 2022, operational audits conducted by the Florida Auditor General have included review of school district compliance with § 1001.42. This oversight context is relevant to audit-risk assessment, but it does not constitute a formal, binding interpretation of § 1001.42. To the extent the District elects to use a co-sourced or outsourced model, aligning the structure with the statute's reporting requirement (direct reporting to the District School Board or its designee) remains a key risk-mitigation feature. See § 1001.42, Fla. Stat.

In addition, the Florida Department of Education has issued a written position directly addressing this question. In a May 29, 2020 letter to the Lee County Superintendent concerning Auditor General Report No. 2020-201, the Department concluded that a district may satisfy the statutory requirement in section 1001.42 to "employ an internal auditor" by hiring a private CPA firm to perform internal audit services, and determined that the Lee County School Board was in compliance under that outsourced model. This letter is not a rule or judicial precedent; however, it is strong persuasive support regarding the Department's interpretation and the oversight expectations applied in practice.

As additional nonbinding, informational context, counsel contacted peer districts regarding internal audit structure and was informed that similar co-sourced or outsourced arrangements are in use, including models generally comparable to Volusia County Schools.

More generally, recent operational audits reflect that districts have utilized co-sourced or outsourced internal audit models without findings under § 1001.42 based solely on the use of an external provider. The degree of risk depends on the specific structure and execution of the engagement, including maintaining independence and direct reporting to the District School Board or its designee.

Also, as additional audit-risk context (and without independent verification), the District's internal audit function has represented that, within its current portfolio of Florida school district internal audit clients that have undergone an Auditor General operational audit within the past three years, none received findings specifically citing § 1001.42 during that period. The internal audit function has further represented that, in connection with those audits, the Auditor General did not raise concerns regarding the districts' internal audit structures under § 1001.42.

1. Brevard (report issued 12/03/2025)
2. Broward (report issued 02/27/2025)
3. Clay (report issued 10/03/2024)
4. Collier (report issued 12/03/2024)
5. Lee (report issued 02/17/2026)
6. Manatee (report issued 12/04/2025)
7. Marion (report issued 05/16/2024)
8. Osceola (report issued 10/13/2025)
9. Seminole (report issued 12/14/2023)
10. Volusia (report issued 02/25/2025)

While the oversight context and the information above do not constitute a formal interpretation or approval by the Auditor General or the Florida Department of Education, they provide relevant context regarding oversight expectations and audit risk associated with third-party internal audit models.

D. Industry Standards and Best Practices

Professional standards issued by the Institute of Internal Auditors (IIA) emphasize independence, organizational positioning, and direct communication with those charged with governance. An internal audit function that is structured to operate independently of district administration and to report directly to the District School Board and its Audit Committee is consistent with those principles.

Consistent with these standards, structuring the internal audit function to report directly to the District School Board and its Audit Committee also enhances the District's ability to conduct independent, ongoing financial verification; perform risk-based auditing; and provide proactive monitoring and advisory services, in alignment with statutory expectations and recognized best practices for public-sector governance.

V. COUNTER-ARGUMENTS CONSIDERED

In advising the Board, counsel has considered the following counter-arguments:

1. Ordinary Meaning of “Employ.”

The term “employ” could be read to imply direct district employment.

Response: Section 1001.42 contains no such limitation and instead emphasizes reporting structure and oversight.

2. Absence of Express Contracting Language.

The statute does not expressly authorize contracting.

Response: Legislative silence does not impose a restriction where the statute otherwise focuses on function, independence, and Board oversight.

3. Governance and Accountability Concerns.

A contractor may raise continuity or accountability concerns.

Response: These considerations can be addressed through contract terms and Audit Committee oversight; they do not establish a statutory prohibition.

4. Lack of Formal DOE or Judicial Endorsement.

No rule or court decision expressly approves the model.

Response: There is likewise no express statutory prohibition, and the oversight context discussed above reflects that properly structured models have not been treated as categorically inconsistent with § 1001.42.

VI. WEIGHING OF CONSIDERATIONS

After considering the statutory text, the statute’s structure (including the direct reporting requirement), the Board’s general contracting authority, and the counter-arguments discussed above, counsel believes there is a reasonable basis to interpret § 1001.42 in a manner that permits the Board to secure internal audit services through either direct employment or contractual engagement—so long as the internal audit function maintains independence and reports directly to the Board or its designee. See § 1001.42, Fla. Stat.; § 1001.41(4), Fla. Stat.

VII. CONCLUSION

Section 1001.42, Florida Statutes, requires the District School Board to ensure the existence of an internal audit function and requires that the internal auditor report directly to the Board or its designee. See § 1001.42, Fla. Stat. The statute’s text does not expressly address whether the Board must satisfy the “shall employ” language through direct district employment, or whether the Board may satisfy the requirement through a contractual engagement authorized by the Board’s general power to contract. See § 1001.41(4), Fla. Stat.

Accordingly, and subject to maintaining independence, full access, and direct reporting to the Audit Committee and the District School Board (or other Board designee), counsel reaches a firm conclusion that the District may satisfy section 1001.42 through a qualified third-party internal auditing service (including a private CPA firm), rather than only through a direct district employee.

This conclusion is strongly supported by the Florida Department of Education's written determination that a district may satisfy the requirement to "employ an internal auditor" by contracting with a private CPA firm for internal audit services.

EXHIBIT A

Florida Department of Education Letter (May 29, 2020) – Internal Auditor Requirement Under § 1001.42, Florida Statutes

Date: May 4, 2026

To: Volusia County School Board Members

Cc: Dr. Carmen Balgobin, Superintendent; Dr. Gilbert Evans, General Counsel

From: Heidi M. Crimins, Staff Attorney

Re: Response to Community Member Concern Regarding General Counsel Reporting Structure; Board Control of Legal Direction and Positions

QUESTION PRESENTED

Whether a governance structure under which the School Board defines the District's legal direction and legal positions, while the Superintendent provides administrative and logistical supervision of the General Counsel (e.g., workflow coordination, records access, scheduling), is consistent with Fla. Const. art. IX, § 4(b) (district school board "shall operate, control and supervise all free public schools within the school district"); Chapters 1001 and 1003, Florida Statutes; and Florida Bar Rules 4-1.13(a) and 4-1.7.

BRIEF ANSWER

Yes. The concern raised by the community member misstates the reporting structure in place. Under the current structure, the School Board defines the District's legal direction and legal positions, consistent with Fla. Const. art. IX, § 4(b) (district school board "shall operate, control and supervise all free public schools within the school district"). The Superintendent serves as the "secretary and executive officer of the district school board." § 1001.48, Fla. Stat. (2025). The district school superintendent's "general powers" include advising/recommending matters to the Board and executing Board-adopted rules. § 1001.49(2), (4), Fla. Stat. (2025). Administrative/logistical supervision of counsel's workflow does not alter (i) the identity of the client under Florida Bar Rule 4-1.13(a) (a lawyer employed or retained by an organization "represents the organization acting through its duly authorized constituents") or (ii) counsel's conflict obligations under Florida Bar Rule 4-1.7(a)(2) (a conflict exists where there is a "substantial risk" representation will be "materially limited" by responsibilities to a third person or by the lawyer's personal interest).

FACTS / BACKGROUND

A community member raised a concern that the District's General Counsel/Board Attorney "reports to" the Superintendent rather than the School Board, suggesting this would compromise the Board's interests. The District's reporting structure, however, distinguishes between (a) *legal direction and legal positions*—which are established by the

School Board as the District’s governing body—and (b) *administrative and logistical supervision*—through which the Superintendent coordinates workflow, scheduling, information flow, and operational implementation consistent with Board policy and Board-directed legal objectives.

APPLICABLE LAW

A. CONSTITUTIONAL AUTHORITY

Fla. Const. art. IX, § 4(b) provides: “In each school district, the district school board shall operate, control and supervise all free public schools within the school district.”

B. STATUTORY AUTHORITY (CHAPTERS 1001 AND 1003, FLORIDA STATUTES)

Chapter 1001, Florida Statutes, establishes the district school board as “a body corporate” with the capacity to “sue and be sued” and to be the “contracting agent” for the district. § 1001.40, Fla. Stat. (2025). The Legislature further grants the district school board “general powers” including the power to “determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.” § 1001.41(1), Fla. Stat. (2025). The Superintendent is the secretary and executive officer of the district school board. § 1001.48, Fla. Stat. (2025). The district school superintendent’s “general powers” include, among others, to “advise and counsel with the district school board on all educational matters and recommend to the district school board for action such matters as should be acted upon” and, after adoption, to “see that” Board-adopted rules “are executed.” § 1001.49(2), (4), Fla. Stat. (2025). Chapter 1003 provides that district school boards are “constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts.” § 1003.02, Fla. Stat. (2025).

C. RULES REGULATING THE FLORIDA BAR

Florida Bar Rule 4-1.13(a) provides: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

Florida Bar Rule 4-1.7(a)(2) provides that, except as provided in subdivision (b), “a lawyer must not represent a client if ... there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

ANALYSIS

1. THE CURRENT STRUCTURE PRESERVES THE SCHOOL BOARD AS THE ORGANIZATIONAL CLIENT AND SOURCE OF LEGAL DIRECTION

Under Fla. Const. art. IX, § 4(b), the district school board “shall operate, control and supervise all free public schools within the school district.” Chapter 1001 assigns governance authority to the Board, including the “general powers” to “determine policies and programs necessary for the efficient operation and general improvement of the district school system.” § 1001.41, Fla. Stat. (2025). Florida Bar Rule 4-1.13(a) confirms the corresponding client-identity principle for counsel: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” In this setting, the School Board is the duly authorized constituent for Board governance and Board legal-position decisions.

2. ADMINISTRATIVE AND LOGISTICAL SUPERVISION BY THE SUPERINTENDENT IS CONSISTENT WITH THE SUPERINTENDENT’S STATUTORY ROLE WHERE THE BOARD DEFINES LEGAL DIRECTION AND LEGAL POSITIONS

Section 1001.48, Florida Statutes, designates the Superintendent as the “secretary and executive officer of the district school board.” § 1001.48, Fla. Stat. (2025). Section 1001.49 provides the superintendent’s “general powers,” including to “advise and counsel with the district school board on all educational matters” and to “see that” Board-adopted rules “are executed.” § 1001.49(2), (4), Fla. Stat. (2025). Within that statutory framework, administrative/logistical supervision of counsel’s workflow is distinct from, and does not displace, the School Board’s authority to define legal direction and legal positions on Board matters.

3. RULE 4-1.7 REQUIRES CONFLICT SCREENING AND ESCALATION WHEN MATTERS INVOLVE THE SUPERINTENDENT’S PERSONAL INTERESTS

Florida Bar Rule 4-1.7(a)(2) applies where there is a “substantial risk” that representation “will be materially limited by the lawyer’s responsibilities to ... a third person.” In matters implicating the Superintendent’s personal interests (for example, discipline, contract/employment issues, investigations, or claims), the risk analysis under rule 4-1.7(a)(2) is fact-specific and requires counsel to evaluate whether the Superintendent’s role in administrative supervision creates a material limitation in that particular matter and, if so, to proceed only as permitted by the rule.

4. ATTORNEY-CLIENT PRIVILEGE CONSIDERATIONS UNDER FLORIDA LAW

Section 90.502(1)(c), Florida Statutes, defines a communication as “confidential” when it is “not intended to be disclosed to third persons other than” those “to whom disclosure is in furtherance of the rendition of legal services to the client” or those “reasonably necessary for the transmission of the communication.” § 90.502(1)(c), Fla. Stat. (2025). In the school-district context described in this memorandum, inclusion of the Superintendent in communications may be consistent with the statutory definition when disclosure is in furtherance of the rendition of legal services to the Board/District or reasonably necessary for transmission; however, the confidentiality determination is fact-specific and depends on the intent to limit disclosure to persons within the scope of the statute.

5. STATEWIDE PRACTICE: MANY DISTRICTS UTILIZE A SINGLE-GENERAL-COUNSEL MODEL WITH BOARD-DIRECTED LEGAL POSITIONS AND ADMINISTRATIVE COORDINATION THROUGH THE SUPERINTENDENT

Many Florida school districts utilize a single-general-counsel (or unified legal-services) model in which the same legal office advises both the School Board and the Superintendent/administration on district business. The Districts I was able to confirm are (this is not an exhaustive list):

1. Orange County
2. Levy County
3. Miami-Dade County
4. Escambia County
5. Pinellas County
6. Columbia County
7. Hamilton County
8. Pasco County
9. Bay County

Regardless of structure, Florida Bar Rule 4-1.13(a) requires clarity that counsel “represents the organization acting through its duly authorized constituents,” and Florida Bar Rule 4-1.7(a)(2) governs any particular matter in which there is a “substantial risk” that counsel’s representation “will be materially limited” by responsibilities to a third person or by counsel’s personal interest.

CONCLUSION

The community concern that the General Counsel “reports to” the Superintendent in a manner that displaces the School Board’s authority is not consistent with the District’s described structure. Fla. Const. art. IX, § 4(b) provides that the district school board “shall operate, control and supervise all free public schools within the school district.” Chapter 1001 establishes the School Board as “a body corporate,” § 1001.40, Fla. Stat. (2025), and grants “general powers” including the power to “determine policies and programs necessary for the efficient operation and general improvement of the district school system,” § 1001.41, Fla. Stat. (2025), while §§ 1001.48–.49, Fla. Stat. (2025), assign the Superintendent secretary/executive-officer status and “general powers” to advise the Board and execute Board-adopted rules. Florida Bar Rule 4-1.13(a) provides that a lawyer employed or retained by an organization “represents the organization acting through its duly authorized constituents,” and Florida Bar Rule 4-1.7(a)(2) governs any particular matter where there is a “substantial risk” that representation “will be materially limited” by responsibilities to a third person or by a personal interest of the lawyer. Where the School Board defines legal direction and legal positions, and the Superintendent’s supervision is administrative/logistical rather than legal-directional, the structure described is consistent with these authorities.

If desired, recommended operational protocols (e.g., conflict-escalation and privilege-handling procedures) can be provided in a separate document.